

IOWA DISTRICT COURT FOR POLK COUNTY

AFSCME/IOWA COUNCIL 61,

Petitioner,

v.

PUBLIC EMPLOYMENT RELATIONS
BOARD,

Respondent.

SPENCER MUNICIPAL HOSPITAL,

Intervenor.

CASE NO. AA 2365

RULING ON PETITION FOR
JUDICIAL REVIEW

10 / 17 / 94

On September 23, 1994, the petition for judicial review filed by AFSCME/Iowa Council 61 came on for oral argument before the Court. Petitioner appeared by its attorney, Betty Buitenwerf. Respondent Public Employment Relations Board (hereinafter PERB) appeared by its attorney, Jan V. Berry. Intervenor Spencer Municipal Hospital appeared by its attorney, Edwin N. McIntosh. After hearing the arguments of counsel, reviewing the transcript of proceedings and the court file, and being fully advised in the premises, the Court now enters the following ruling.

In this proceeding, AFSCME seeks review of a PERB decision dated February 18, 1994 concerning the creation of certain bargaining units at the Spencer Hospital. PERB's decision became final on March 18, 1994 when it denied AFSCME's application for rehearing. The factual background underlying the present case is not in dispute, and is briefly summarized below.

On June 23, 1992, the Iowa Nurses' Association (hereinafter INA) filed a Combined Petition for Bargaining Unit Determination and Representative Certification with PERB pursuant to Iowa Code Section 20.13 and 20.14 and PERB Rule 4.4, 621 Iowa Administrative Code

Section 4.4(2). INA's petition requested that PERB certify a bargaining unit composed of all registered nurses holding non-supervisory positions with the Spencer Municipal Hospital as appropriate for the purposes of collective bargaining under the Public Employment Relations Act.

On October 8, 1992, AFSCME filed a Combined Petition for Unit Determination and Representative Certification with PERB; the petition requested that PERB certify a bargaining unit composed of all full-time and part-time employees in the Ambulance and Maintenance Department as appropriate for purposes of collective bargaining under the Public Employment Relations Act. The employer, Spencer Municipal Hospital, asserted that the appropriate unit should be a wall-to-wall unit, or in the alternative, two units which include a) a patient care unit or all professional and non-professional patient care employees in non-supervisory positions, and b) a non-patient care unit or all professional and non-professional non-patient care employees in non-supervisory positions. The two petitions were later consolidated for hearing.

On May 14, 1993 the ALJ issued a Proposed Decision and Order finding that the appropriate bargaining units within the meaning of Section 20.3 of the Public Employment Relations Act were as follows:

Unit One

INCLUDED: All full-time and part-time registered nurses holding non-supervisory positions in the patient care area.

EXCLUDED: All employees who are not registered nurses in the patient care area and employees excluded by section 20.4 of the Iowa Code.

Unit Two

INCLUDED: All full-time and part-time skilled maintenance employees, paramedics and paramedic supervisor.

EXCLUDED: All other employees who are not skilled maintenance employees, paramedics, or the paramedic supervisor and employees excluded by Section 20.4 of the Iowa Code.

The employer appealed the Proposed Decision to the Board. On February 18, 1994, the Board issued its Appeal Decision. The Appeal Decision upheld the ALJ's Decision with regard to Unit One, the registered nurses bargaining unit sought by INA. However, the Board overruled the ALJ's Decision with regard to the unit sought by AFSCME and created the following units:

- (a) all non-professional patient care employees not excluded by Section 20.4, and
- (b) all non-professional non-patient care employees not excluded by Section 20.4.

AFSCME then timely filed an application for rehearing before the Board, which was denied.

AFSCME then properly filed a petition for judicial review by the Court.

The material facts underlying the case are not in dispute, and are well summarized in petitioner's original brief. While the Court will not set forth these facts in their entirety, certain facts are important to the present issues. The hospital is a 110 bed, acute care hospital with 99 acute care beds and 21 skilled nursing beds. The hospital employs approximately 380 employees, of which 350 are non-supervisory employees. There are 120 registered nurses. In the plant operations department, there are 9 full-time and 2 part-time employees, including 3 maintenance specialists and 6 skilled maintenance employees. There are 6 paramedics in the ambulance area of the nursing department.

A skilled maintenance employee performs two distinct job functions: maintenance duties and emergency medical technician (EMT) duties, and is supervised the plant operations department. A paramedic performs emergency medical duties, and is supervised by the paramedic supervisor in the department of nursing. Skilled maintenance employees spend 90% of their time on maintenance duties and 10% on EMT duties. However, when the skilled maintenance employee is needed for an ambulance call, this function takes priority. The skilled maintenance employees consider themselves part of an emergency team with the paramedics.

The parties have some dispute as to legal principles apply to the Court's review of the

agency action here. In its initial brief, AFSCME asserts that the Court must review the agency action for error of law or abuse of discretion. Intervenor Spencer Hospital argues that the Court must determine whether substantial evidence supports the decision of the Board. In addition, PERB contends in its brief that the issues for which AFSCME now seeks judicial review were not properly raised before the agency.

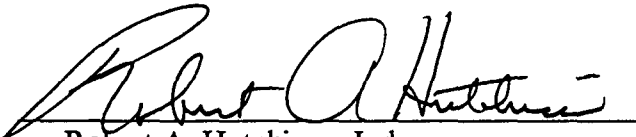
While the position(s) taken by AFSCME may appear somewhat confusing and contradictory in its brief, counsel for petitioner clarified its position at oral argument. AFSCME does not contend that PERB is required to follow the NLRB unit scheme contained in 29 CFR 103.30 (1990), nor does it seriously assert that there is not substantial evidence to support the unit determinations made by PERB. What AFSCME does vigorously argue is that it constitutes an abuse of discretion for PERB in this case to follow or utilize the NLRB unit criteria for one bargaining unit and not follow the same system for the second bargaining unit. AFSCME also argues that the size of a bargaining unit is not a factor that may be considered in a unit determination, citing as authority Anthon-Oto Community School District v. PERB, 404 N.W.2d 140 (Iowa 1987).

After reviewing Anthon-Oto, the Court finds it dispositive of the issues in this case. The Court can find no suggestion in the case that the size of a bargaining unit is not a proper factor to be considered by PERB; indeed the language of the opinion intimates that such size is a proper consideration. Furthermore, Anthon-Oto stands for the proposition that under Iowa law the determination of bargaining units must be done on a case by case basis. AFSCME argues that PERB slavishly followed the NLRB criteria for one bargaining unit here while ignoring the same criteria for the second unit, resulting in an abuse of discretion. A careful reading of the PERB decision discloses no such result. PERB certainly discussed the NLRB criteria, and appropriately so. But PERB went to make the case by case determination required by the Iowa Supreme Court

in Anthon-Oto. For this Court to now rule that PERB erred by failing to follow strictly the NLRB bargaining unit scheme would be to stand Anthon-Oto on its head.

The Court concludes that there is substantial evidence to support the bargaining units certified by PERB, and that there has been no showing of any error of law or abuse of discretion by PERB. Accordingly, the decision of the agency is hereby AFFIRMED.

Dated this 17th day of October, 1994.



Robert A. Hutchison, Judge-
Fifth Judicial District of Iowa

Copies to:

Betty Buitenwerf
4320 N.W. Second Ave.
Des Moines, IA 50313

Jan Berry
514 E. Locust, Suite 200
Des Moines, Ia 50309

Edwin N. McIntosh
801 Grand, Suite 3900
Des Moines, IA 50309